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Methamphetamine: Legislation and Issues in the 109th Congress

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Summary

Illicit methamphetamine (MA) production and use are longstanding and severe problems in some states. In recent years, they have increasingly spread nationwide, emerging as an object of heightened federal concern. During the 109th Congress, more than 25 bills have been introduced to address the MA problem. On November 16, 2005, the House Judiciary Committee reported H.R. 3889, the Methamphetamine Epidemic Elimination Act; the House Commerce Committee reported H.R. 3889 on November 17. A compromise version, including provisions from H.R. 3889 and S. 103, the *Combat Meth Act of 2005*, was included in the conference report for H.R. 3199, *USA PATRIOT Improvement and Reauthorization Act of 2005* (H.Rept. 109-333), reported on December 8, 2005. H.R. 3199 was not passed before the session ended. MA abuse has implications for public health, child welfare, crime and public safety, border security, and international relations. This report provides a brief overview of MA abuse, production, trafficking, the federal methamphetamine-specific programs, and anti-MA legislation introduced in the 109th Congress. This report will be updated to reflect future legislative activity.

Background

Methamphetamine (MA), a drug of the amphetamine group, is a powerful and addictive central nervous system stimulant. Originally used as a nasal decongestant and bronchiodialator, MA has been marketed under the trade names Methedrine® and Desoxyn® since the 1940s. MA is currently used to treat medical conditions, including narcolepsy, attention deficit disorder/attention deficit/hyperactivity disorder (ADD/ADHD), and obesity. Illicit MA production and use are longstanding and severe problems in some states, and there are indications that MA abuse may be rising.[1] Although abuse of this drug may vary by region of the country, MA use has spread to every state, despite being more pervasive in the West and Midwest than in the

[1] U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Statistics, *National Survey on Drug Use and Health Report*, Sept. 16, 2005.

Northeastern part of the country.[2] Methamphetamine can be administered orally, nasally, by injection, and, in the powder form that resembles granulated crystals, often referred to as "ice," by smoking.[3] MA can cause convulsions, stroke, cardiac arrhythmia, and hyperthermia. Chronic use can lead to irreversible brain and heart damage, psychotic behavior including paranoid ideation, visual and auditory hallucinations, and rages and violence. Withdrawal from the drug can induce paranoia, depression, anxiety, and fatigue.[4] The issue before Congress is how to address the problem of illicit MA abuse and its illicit production in clandestine labs. Among some options, Congress is considering legislation that would further regulate MA precursor chemicals, enhance penalties for drug trafficking, and increased funding for MA-specific law enforcement programs. An annual survey by the Substance Abuse and Mental Health Services Administration (SAMHSA) provides information about MA use in recent years (see **Table 1**). According to SAMHSA, in 2004, 1.4 million persons ages 12 and older used MA in the past year and 583,000 used in the past month. The number of past month MA users who met the criteria for illicit drug *dependence* or *abuse* increased from 164,000 users in 2002 to 346,000 in 2004, and increased from 10.6% to 24% of users in the last year. Of these past month MA users, 130,000, or 22.3%, had used stimulants, most often MA, as their primary substance of abuse in 2004. The percentage of MA users in the last year who had used stimulants (most often MA) as their primary drug of abuse also increased, from 4.1% in 2002 to 9.0% in 2004, a small but rapidly rising share of users.

Sources of Illicit Methamphetamine

According to the Drug Enforcement Agency (DEA), most illicit MA available in the United States is produced in laboratories located in Mexico or California, which is then distributed across the country using existing drug trafficking routes. DEA estimates that between 65% and 80% of all MA consumed in the United States is smuggled into the country from Mexico.[5]

MA Precursor Chemicals. The precursor chemicals necessary for producing MA are ephedrine, pseudoephedrine, or phenylpropanolamine, which are commonly found in over-the-counter (OTC) cold and sinus medicines that have legitimate uses, and are available in retail quantities from any drug store.[6] These MA precursor chemicals are regulated (see below), yet the possibilities for criminal diversion exist and have been aggressively exploited by illicit MA producers.

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[2] National Institute of Justice, *Drug and Alcohol Use and Related Matters Among Arrestees, 2003*, 2004.

[3] U.S. Department of Justice, Drug Enforcement Agency, *Methamphetamine and Amphetamines*, Fact Sheet, at [http://www.dea.gov/concern/meth_factsheet.html], accessed on Nov. 15, 2005.

[4] U.S. Executive Office of the President, Office of National Drug Control Policy, *Methamphetamine*, Fact Sheet, at [http://www.methresources.gov/], accessed on Nov. 15, 2005.

[5] Ibid.

[6] For example, pseudoephedrine is an active ingredient in products like Sudafed, Actifed, NyQuil, and Claritin-D.

Table 1. Use of MA among Persons Aged 12 or Older, 2002-2004

Use	2002	2003	2004
Lifetime Use	12,383,000	12,303,000	11,726,000
Use in Last Year	1,541,000	1,315,000	1,440,000
New Users in Last Year	323,000	260,000	318,000
Use in Last Month	597,000	607,000	583,000
Dependent Use in Last Month	164,000	250,000	346,000
Stimulant is Primary Drug of Abuse	63,000	92,000	130,000
Other Illicit Drug is Primary Drug of Abuse	101,000	158,000	216,000

Source: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, National Survey of Drug Use and Health, 2002-2004.

Clandestine "Super" Laboratories. As noted above, most illicit MA available in the United States is produced in large clandestine laboratories in Mexico and California.[7] In these large labs, known as "super labs,"[8] MA is produced by persons linked to established drug trafficking organizations (DTOs). These super labs most often obtain the precursor chemicals they need to produce MA in wholesale quantities on the international market. According to DEA, much of the MA precursor chemical, pseudoephedrine, is either purchased by DTOs from one of seven chemical companies in Europe, Asia, and the Far East and smuggled into Mexico and the United States, or diverted from legitimate sources.

Small Clandestine Labs. The small domestic amateur labs, commonly referred to as "box" or "mom-and-pop" labs, can be set up in home kitchens, motel rooms, or other similar spaces, and produce MA with pseudoephedrine and other ingredients available at retail stores. These small labs produce illicit MA using one of several relatively simple methods. The methods most commonly used are ones that use OTC cold medicines containing pseudoephedrine, and other ingredients including acetone, hydrochloric acid, sodium hydroxide, ether, anhydrous ammonia, cat litter, antifreeze, and drain cleaner.

Current Law

Methamphetamine is a Schedule II drug under the *Controlled Substances Act of 1970* (CSA).[9] Under the CSA (21 U.S.C. §801 et seq.), penalties for MA vary by the amount an individual is in possession of when arrested and can include a fine and a mandatory minimum sentence. The CSA has evolved over the years as the scope of the act was expanded to include regulation of chemicals used in the illicit production of a controlled

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[7] U.S. DOJ, DEA, Methamphetamine Brief, available online at [http://www.usdoj.gov/dea/concern/meth_factsheet.html], accessed on Nov. 15, 2005.

[8] A "super lab" is one that is capable of producing 10 pounds or more of MA per production cycle.

[9] Drugs or other substances are classified under Schedule II after a finding that they (1) have a high potential for abuse, and (2) have a currently accepted medical use in treatment in the U.S. or a currently accepted medical use with the risk of severe dependence. Since 1971, all amphetamines, including all forms of MA, are classified under Schedule II.

substance.[10] Precursor chemicals used to produce MA were brought under CSA control by the Comprehensive Methamphetamine Control Act of 1996 (MCA), which also increased penalties for the trafficking and manufacturing of MA and its precursor listed chemicals, and expanded the controls on products containing the licit chemicals ephedrine, pseudoephedrine, and phenylpropanolamine (PPA). The Methamphetamine Penalty Enhancement Act of 1998 lowered certain quantity thresholds for mandatory minimum trafficking penalties. The Methamphetamine Anti-Proliferation Act (MAPA) of 2000 reduced the thresholds for single OTC purchases of pseudoephedrine and phenylpropanolamine products to 9 grams and required the use of "blister packs" for products of more than 3 grams of pseudoephedrine. MAPA also strengthened sentencing guidelines, provided training for federal and state law enforcement officers handling chemicals from clandestine MA labs, and expanded substance abuse prevention efforts.

Federal Programs[11]

Many agencies and bureaus within DOJ are involved in addressing the issue of illicit MA. Chief among them is the Drug Enforcement Agency (DEA). Through collaborations with the Federal Bureau of Investigation (FBI), and numerous task forces, including the Organized Crime Drug Enforcement Task Force (OCDETF) and the High Intensity Drug Trafficking Areas (HIDTA), and collaborations with other federal, state and local law enforcement, DEA targets drug traffickers across the country and internationally to stem the flow of illegal drugs in the United States. According to DEA, the total amount of MA interdicted at the U.S.-Mexico border in 2002 had increased by more than 17% since 1999.[12]

The "Meth Hot Spots" program under the Community Oriented Policing Services (COPS) program is a grant program that *specifically* provides funding for a broad range of initiatives designed to assist state and local law enforcement in undertaking anti-MA initiatives. For FY2006, the Meth Hot Spots program received appropriations of $63.6 million (P.L. 109-108). Between 1998 and mid-2004, the COPS program has provided over $350 million nationwide to address the MA problem.[13] Additional DOJ grant programs provide assistance for a broad range of programs and initiatives which *can* include anti-MA efforts. **Table 2** provides DOJ funding for grants, including Meth Hot Spots grants, awarded to state and local programs related to anti-MA initiatives across the country. For the period FY2000-FY2005, 470 grants were provided, totaling $263.8 million.

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[10] For more information on regulation of pseudoephedrine in OTC medications see, CRS Report RS22177, *The Legal Regulation of Sales of Over-the-Counter Cold Medication*, by Jody Feder.

[11] In addition to the programs and activities mentioned in this report, there are programs throughout the federal government that provide activities and services related to the prevention, education and treatment of MA, and to assisting localities with clandestine lab remediation. They are, however, beyond the scope of this report.

[12] DEA Resources, For Law Enforcement Officers, Intelligence Reports, Federal-Wide Drug Seizures, available at [http://www.usdoj.gov/dea/].

[13] U.S. Department of Justice, Office of Community Oriented Policing Services, *COPS Fact Sheet: Methamphetamine Initiative*, Sept. 2004, available at [http://www.cops.usdoj.gov].

Table 2. DOJ Awards Relating to Methamphetamine Initiatives, FY2000-FY2005

Fiscal year	2000	2001	2002	2003	2004	2005
Total grant amount (in millions)	$12.6	$32.5	$52.5	$62.9	$55.0	$48.3
Total number of grants	23	44	118	101	97	87

Source: DOJ, Bureau of Justice Assistance, totals as of October 19, 2005.

Legislation in the 109th Congress

Numerous bills have been introduced in the 109th Congress to curb MA use, trafficking, and production (see **Table 3**); two, S. 103 and H.R. 3889, have been reported from committees for consideration on the floors of the House and Senate.[14] H.R. 3199, the USA PATRIOT Improvement and Reauthorization Act of 2005, which was passed by the House on July 21 and by the Senate on July 29, 2005. The conference report on H.R. 3199 (H.Rept. 109-333) was reported on December 8, 2005, and includes a compromise that contains elements of both S. 103 and H.R. 3889. The Congress ultimately did not reach an agreement on the conference report for H.R. 3199.

H.R. 3889, as reported by the House Judiciary and Energy and Commerce Committees (H.Rept. 109-299, Part 1 and Part 2) on November 17, 2005, would classify MA-precursor chemicals (pseudoephedrine, phenylpropanolamine, and ephedrine) as Listed Chemicals under the CSA, reduce the federal per-transaction retail sales limit for products containing these MA-precursors from 9 to 3.6 grams, eliminate the *blister-pack* exemption, and place similar limits on mail-order retailers. The bill would require that OTC products containing MA precursors be kept behind the counter and secured by retailers. The Attorney General would be authorized to set production quotas for MA precursor chemicals, penalize domestic over-production, set import quotas for MA precursors, and require notification about changes in imports and exports of MA precursors. The bill would also require additional efforts to prevent smuggling of MA into the U.S. from Mexico by improving bilateral efforts at the border, working with Mexican law enforcement authorities to combat the production and trafficking of MA by providing equipment and technical assistance, and by encouraging the Mexican government to take action to reduce the diversion of pseudoephedrine by DTOs. The bill would make it illegal to possess ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture a controlled substance; enhance imprisonment sentences for smuggling MA or MA precursors through certain expedited border crossings at the U.S. borders; make it illegal to "manufacture" a controlled substance on Federal property; and make it easier to convict MA "kingpins." The bill would provide a new federal penalty of up to 20 years imprisonment, a fine, or both, that would be added as a consecutive sentence for persons convicted of manufacturing or distributing, or possessing with the intent to manufacture or distribute MA on premises where children (under age 18 years) are present or reside. In addition, **H.R. 3889** would require that grants provided under the drug court program have mandatory periodic drug testing of participants, and would require the Attorney General to specify graduated sanctions that

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[14] H.R. 798, was reported by the Committee on Science (H.Rept. 109-42) on Apr. 13, 2005, and passed by the House on December 13, 2005; however, the bill is solely about lab remediation. For more information see, CRS Report RL32959, *Methamphetamine Lab Clean-Up and Remediation Issues*, by Michael Simpson.

drug courts would be required to impose in order to receive grants that would increase punitive and/or therapeutic measures, whenever a participant fails a drug test. The bill would amend the COPS Meth Hot Spots program further specifying how grants could be used and providing funding of $99 million annually would be authorized for FY2006-FY2010. The bill would also authorize the Attorney General to make grants to states for programs to provide a comprehensive response to aid children living in homes where MA is illicitly manufactured, used, or distributed, would authorize appropriations of $20 million annually for FY2006 and FY2007 for this purpose.

S. 103, as reported by the Senate Judiciary Committee on July 28, 2005, would limit the sale of pseudoephedrine to 7.5 grams in a 30-day period, except by prescription, and require that OTC medicines containing pseudoephedrine be sold by licensed pharmacists or pharmacy technicians; and would establish a registry for purchasers of such products. The bill would provide grants for drug endangered children, MA substance abuse treatment, research and training, precursor monitoring programs, and for other purposes.

Table 3. Methamphetamine Legislation in the 109th Congress

Legislative response	Bills containing relevant provisions
Expand regulation of OTC medication	H.R. 314, H.R. 1056, H.R. 1083, H.R. 1350, H.R. 1378, H.R. 1446, H.R. 3324, H.R. 3513, H.R. 3568, H.R. 3889, S. 103, S. 430
Elimination of "blister pack" exemption	H.R. 1350, H.R. 1446, H.R. 3889
Scheduling or listing pseudoephedrine	H.R. 314, S. 103, H.R. 1083, H.R. 1378, H.R. 3955, H.R. 3889[a]
Limit on amount of OTC purchase	H.R. 1056, H.R. 1446, H.R. 3889
Registry or 'behind-the-counter' sales	H.R. 314, S. 103, H.R. 3889,[a] H.R. 3955
Training for retailers - MethWatch	H.R. 1056, H.R. 3513
Retail distributors of pseudoephedrine	H.R. 1056, H.R. 3955, H.R. 3889
Enhanced criminal penalties for MA or precursor chemicals	H.R. 1395, H.R. 1056, H.R. 3513, H.R. 3755, H.R. 3756, H.R. 3889
Import controls on MA and precursors	H.R. 1056, H.R. 3955, H.R. 3889
Precursor chemicals monitoring grants	H.R. 314, H.R. 1446, H.R. 3889, S. 103[a]
MA Laboratory Remediation, guideline development, research	H.R. 13, H.R. 314, H.R. 798, H.R. 3889, S. 103[a], S. 259, S. 430, S. 2019, S. 2046
Regulation of imports of precursor chemicals	H.R. 1446, H.R. 3889
Regulation/quotas for MA precursors	H.R. 1446, H.R. 2601, H.R. 3889
COPS Meth Hot Spots Grants	H.R. 314, S. 103[a], H.R. 1446, H.R. 3889[a]
COPS grants for hiring local prosecutors	H.R. 314, S. 103[a]
Grants for services for drug-endangered children	H.R. 314, S. 103[a], H.R. 1395, H.R. 1446, H.R. 2335, H.R. 3889[a]
Grants for MA abuse treatment	H.R. 314, S. 103[a], H.R. 1446, H.R. 3513
Grants for research, training, technical assistance	H.R. 314, S. 103[a], H.R. 1446
U.S. Attorneys' hiring program	H.R. 314, S. 103[a], H.R. 1446
Research grants for developing pseudoephedrine alternatives	H.R. 1056
Reports on progress of anti-MA laws and regulations	H.R. 1056, H.R. 1446

[a] As reported.